

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

FATEMAH AZZIZIAN, *et al.*,

Plaintiffs,

V.

FEDERATED DEPARTMENT
STORES, INC.; *et al.*,

Defendants.

) CA Civil No. 4:03 C 03359 SBA

CLASS ACTION

SPECIAL MASTER'S REPORT AND RECOMMENDATION

I.

INTRODUCTION

Judge Charles B. Renfrew was appointed Special Master in this case by this Court's Order dated May 25, 2004, pursuant to Rules 23(h)(4), 53, and 54(d)(2)(D) of the FRCP, as revised by this Court's Order of June 17, 2004, pursuant to Rule 53 (b)(4) of the FRCP.

1 On March 30, 2005, this Court entered a Final Judgment approving the settlement of this
2 case, and delegating to the Special Master the authority to conduct further proceedings with
3 regard to the administration of the settlement.

4 Under the terms of the Statement of the Parties, the Coordinated Objectors and Objecting
5 States Concerning the Adequacy of The Proposed Settlement and Plan of Distribution, dated
6 March 8, 2005 (hereinafter the "Statement"), a copy of which is attached hereto as Exhibit A, a
7 Product Review Committee (hereinafter the "PRC") was created, and the Special Master and the
8 PRC were each given certain responsibilities in connection with the product distribution to be
9 conducted under the terms of the settlement of this case.¹ The specific responsibilities of the
10 Special Master and the PRC under the provisions of the Statement are the following: (1) Review
11 of the Products to be Distributed; (2) Review of the In-Store Notice; and (3) Review of the
12 Month in Which the Distribution Will Take Place.

14 The Statement further provides that, "Pursuant to Fed. R. Civ. P. 53, the Special Master
15 will make a report, order or recommendation which the Court shall review pursuant to that rule."
16 (Statement, ¶c) The following constitutes the Special Master's Report and Recommendation
17 with respect to each of the above-mentioned responsibilities assigned to the Special Master and
18 the PRC under the Statement.

24 ¹ The PRC consists of "three persons from among the counsel representing Class Plaintiffs,
25 one counsel representing the state A.G.s, and one counsel representing the Coordinated
26 Objectors. (Statement, ¶c)

II.

REPORT AND RECOMMENDATION

A. Review of the Products to Be Distributed

The Statement provides that the PRC shall review the products to be distributed by Defendants “to ensure that the [products] are consistent, in value, quality and desirability, with the products that heretofore have been presented to the Special Master and the Court in connection with the settlement approval process, and with the terms of the Settlement Agreement.” (Statement, ¶c)

The PRC held three meetings, on January 6, 2008, March 19, 2008 and October 2, 2008, respectively, attended by members of the PRC,² the Special Master and counsel for the Defendants, at which the products that the various Manufacturer Defendants proposed to include in the product distribution were examined. The Manufacturer Defendants also furnished to the Special Master and the PRC information demonstrating that the total retail value of the products being included in the product distribution is \$175,000,000, as specified in the Settlement Agreement. Pursuant to Revised Exhibit C to the Settlement Agreement, ¶11, following the product distribution, Defendants will provide Certifications that appropriate product was supplied by the Manufacturer Defendants and was distributed or otherwise properly disposed of by the Department Store Defendants. Actual samples of each of the proposed products and information about them were presented to the Special Master and the PRC, and representatives

² At the various PRC meetings conducted in this matter, the Class Plaintiffs representatives have been Francis Scarpulla, Michele Jackson and Tracy Kirkham; the counsel representing the state A.G.s has been Jennifer Kirk; and the counsel representing the Coordinated Objectors has been Mitchell Toups or his designee.

1 of the Manufacturer Defendants responded to many questions from the Special Master and
2 members of the PRC concerning the value, quality and desirability of the products.

3 The specific products reviewed and ultimately approved by the Special Master and the
4 PRC are as follows:

5 Boucheron (USA) Ltd.:
6 Femme Eau de Toilette (1 ounce/30 ml)

7 Chanel, Inc.:
8 Coco Mademoiselle body lotion (3.4 fluid oz)

9 Christian Dior Perfumes, Inc.:
10 J'Adore Eau de Parfum (15 ml)

11 Clarins U.S.A., Inc. (customers will have a choice of ONE of two products, while
12 supplies last):

13 Clarins Energizing Morning Cream (30 ml)

14 OR

15 Clarins Beauty Flash Bomb (30 ml)

16 Conopco, Inc. (distributed by Coty, Inc. on behalf of Conopco, Inc.) (customers
17 will have a choice of ONE of three products, while supplies last):

18 Calvin Klein Euphoria Bath and Shower Crème (6.7 oz)

19 OR

20 Vera Wang Princess Body Polish (5 oz)

21 OR

22 Lovely Sarah Jessica Parker Shower Gel (6.7 oz)

23 The Estée Lauder Companies Inc. (customers will have a choice of ONE of two
24 products, while supplies last):

25 Estée Lauder Advanced Night Repair (15 ml/0.5 oz)

26 OR

27 Clinique Moisture Surge (30 ml/1 oz)

28 Guerlain, Inc.:

My Insolence Eau de Toilette (15 ml)

1 L'Oréal USA, Inc. (formerly known as Cosmair, Inc.) (customers will have a
2 choice of ONE of eight products, while supplies last):

3 Lancôme UV Expert 20

4 OR

5 Lancôme Cils Design Pro Mascara

6 OR

7 Lancôme Fatale Mascara

8 OR

9 Lancôme Courbe Virtuose Mascara

10 OR

11 Lancôme Primordial Skin Defense OR

12 OR

13 Ralph Lauren Romance Shower Gel (6.7 oz.) OR

14 OR

15 Giorgio Armani ACM Shower Gel (6.7 oz)

16 OR

17 Lancôme Hypnôse Shower Gel

18 Parfums Givenchy, Inc.:

19 Very Irresistible Givenchy Eau de Toilette (15 ml)

20
21 Based upon their review and examination of the above products, both the members of the
22 PRC and the Special Master unanimously concluded that the above-listed products are consistent
23 in value, quality and desirability with the products that previously had been presented to the
24 Special Master and the Court in connection with this settlement approval process, and with the
25
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1 terms of the Settlement Agreement in this case, and should be approved for use in the product
2 distribution.

3 Thus, the Special Master hereby reports that the above-described products have been
4 approved for use in the distribution, and recommends that the foregoing be approved by the
5 Court.

6 B. Review of the In-Store Notice

7 The Statement provides that there shall be an in-store notice of the distribution, which
8 shall be consistent with the notice to be published in fifty newspapers across the country
9 immediately prior to the distribution (referred to as the “back-end” notice), and which shall
10 include the limit of one product per customer. The in-store notice is to be displayed at prominent
11 places in the cosmetics departments of the stores participating in the distribution. The Statement
12 provides that “the contents of the in-store notice and the period during which it will be displayed
13 shall be submitted by Defendants to the Special Master for approval and the . . . PRC. . . for
14 comment at least 90 days prior to the commencement of the distribution.” (Statement, ¶b)

15
16 On October 2, 2008,³ a meeting was held among members of the PRC, the Special
17 Master, and representatives of Defendants, at which Defendants submitted the content of the in-
18 store notice and the period during which it would be displayed, for comment by the PRC and for
19 approval for the Special Master.

20
21 There was extensive discussion of the content and format of the in-store notice,
22 with numerous comments and suggestions made by members of the PRC. The Special Master
23 invited one of the members of the PRC, the representative of the State AGs, to submit her
24

25 ³ As provided in the Statement, ¶b, this was at least 90 days prior to the commencement of the
26 distribution, which, as noted below, is scheduled to take place in January 2009.

1 proposal for a modified version of the in-store notice, which, following the meeting, she did. In
2 consultation with the Special Master, additional informal discussions were held between a
3 representative of the Defendants and members of the PRC, which culminated in further
4 modifications, and, ultimately, in an agreed-upon version of the in-store notice that was accepted
5 by all concerned parties, namely, the Defendants, the representative of the State AGs and the
6 other members of the PRC, as meeting the requirements of the Statement.

7 The Special Master, having reviewed the current version of the in-store notice, a
8 copy of which is attached hereto as Exhibit B, and having considered all of the various
9 comments and suggestions of the PRC and the fact that the PRC has accepted this current version
10 of the in-store notice, concludes that the in-store notice meets the requirements of the Statement
11 and hereby approves it for use in the product distribution.

12 In addition, pursuant to the Statement, Defendants were also to submit to the PRC
13 for comment, and to the Special Master for approval, the period during which the in-store notice
14 will be displayed. (Statement, ¶b) At the October 2, 2008 PRC meeting at which the in-store
15 notice was considered, Defendants stated that the in-store notice will be displayed beginning five
16 days before the product distribution is scheduled to commence, and will remain on display for
17 the duration of the distribution. The PRC approved that timing, and, having considered the
18 various comments made by defendants and the members of PRC, the Special Master concludes
19 that the timing of the display of the in-store notice, as proposed by Defendants, is appropriate.

20 Thus, the Special Master hereby reports that it has approved the in-store notice,
21 and that it has approved the display of the in-store notice beginning five days before the product
22 distribution commences and continuing for the duration of the distribution, and recommends that
23 the foregoing be approved by the Court.
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1 C. Review of the Month in Which the Distribution Will Take Place

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3 The Statement provides that the Special Master "will be responsible for reviewing
4 and approving the month of the year in which the distribution of [products] will actually take
5 place." (Statement, ¶d). At the first PRC meeting, held on January 16, 2008, Defendants
6 advised that they intend to commence the product distribution within the month of January 2009.

7 The selection of the month of January for the product distribution is consistent
8 with Revised Exhibit C to the Settlement Agreement, which was approved as part of the
9 settlement of this case, and which contemplated that the distribution will take place within the
10 month of January. Both the parties and the PRC continue to consider that month to be
11 acceptable. Accordingly, the Special Master concludes that the month of January is acceptable
12 and appropriate for the distribution.
13

14 Thus, the Special Master hereby reports that it has approved January as the month
15 within which the distribution will take place, and recommends that the foregoing be approved by
16 the Court.
17

18 III.

19 CONCLUSION

20 For the reasons set forth above, the Special Master recommends that the Court approve
21 and adopt this Report and Recommendation (1) approving the products to be distributed in the
22 product distribution; (2) approving the in-store notice and the timing of its display; and (3)
23 approving the month in which the product distribution will take place.
24

25 DECEMBER 5, 2008
26 Dated November 2, 2008

27 LAW OFFICES OF CHARLES RENFREW

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Raye Scholer LLP

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Charles B. Renfrew
The Honorable Charles B. Renfrew
Special Master

RECEIVED, ADOPTED AND SO ORDERED

Sandra B. Armstrong
Sandra Brown Armstrong
United States District Judge

Dated: 12/18/08

EXHIBIT A

**Attorneys for Defendant The Estée Lauder Companies Inc.
(Additional Counsel Listed on Signature Page)**

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

FATEMAH AZIZIAN, et al.

Plaintiffs,

vs.

FEDERATED DEPARTMENT STORES,
INC., et al.

Defendants.

Civil No. 3:03 CV-03359 SBA

CLASS ACTION

**STATEMENT OF THE PARTIES, THE
COORDINATED OBJECTORS AND
OBJECTING STATES CONCERNING
THE ADEQUACY OF THE PROPOSED
SETTLEMENT AND PLAN OF
DISTRIBUTION**

Date: March 8, 2005

Time: 1:00 p.m.

Place: Courtroom 3, 3rd Floor

Judge: Hon. Saundra B. Armstrong

51356.1

STATEMENT OF PARTIES AND OBJECTORS CONCERNING THE ADEQUACY OF THE PROPOSED SETTLEMENT AND PLAN OF DISTRIBUTION

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Pursuant to the Court's directive at the January 11, 2005 hearing, counsel for the Coordinated Objectors,¹ the state Attorneys General² ("A.G.s"), the Class Plaintiffs³ and the Defendants⁴ have met and hereby report to the Special Master the agreements they have reached concerning the plan of distribution for the proposed settlement.

The parties and the undersigned objectors have agreed to modifications to the plan of distribution that have resulted in their supporting final approval of the settlement, including the plan of distribution. Their agreement is as follows:

a. The plan of distribution will be modified to permit each Class member⁵ to obtain only one DSCP⁶ from the Manufacturer Defendant of his or her choice.

¹ The Coordinated Objectors, as referred to herein, are: Tamara Mixon, Robby G. Fletcher, Aaron Jordan, Sharon A. Harris, Brenda Matthews, Mary Swift, Jennifer R. Hill, Jeanine M. Schewenberg, Patricia Corbin, Jane Curtman-Schroeder, Shiela Horn, Lisa M. Rice, Joyce Sproule, Wendy Bullock, Susan Casenza, Valerie Theng-Matherne, Nikki Gibson, and Patricia Corbins. These objectors are 13 of the 16 groups of private objectors who are represented by counsel. Although Hannah Feldman and Grace Wright have joined in some briefing as Coordinated Objectors, they, through their counsel John Pentz and Steven Helfand, do not join in this submission. Richard LeClair, representing objector Kamela Wilkinson, was unable to reach his client in advance of the filing deadline and does not currently join in this submission.

² The A.G.s of the following states are represented in this objection: Alabama, Arizona, Colorado, Hawaii, Kansas, Massachusetts, Mississippi, New Mexico, Pennsylvania, Tennessee and Wisconsin.

³ The named plaintiffs are: Fatemah Azizian, Soraya Farrah, Eunice Fey, Rose Gonzales, Kazuko Y. Morgan, Nicola Nelson-Torres, Judith Pogran, Shirley Powell, Monique Patrick, Pamela Powell and Rose Skillman.

⁴ The term "defendants" encompasses the Department Store Defendants and the Manufacturer Defendants. The Department Store Defendants herein are: Federated Department Stores, Inc. ("Federated"), The Neiman-Marcus Group, Inc. ("Neiman-Marcus"), Nordstrom, Inc. ("Nordstrom"), The May Department Stores Company ("May"), Saks Incorporated, Gottschalks Inc. ("Gottschalks"), Target Corporation, and Dillard's Inc. ("Dillard's"). The Manufacturer Defendants herein are: The Estée Lauder Companies Inc. ("Estée Lauder"), L'Oréal USA, Inc. ("L'Oréal"), Conopco, Inc. ("Conopco"), Christian Dior Perfumes, Inc. ("Dior"), Guerlain, Inc. ("Guerlain"), Parfums Givenchy, Inc. ("Givenchy"), Boucheron (USA) Ltd. ("Boucheron"), Chanel, Inc. ("Chanel"), and Clarins U.S.A., Inc. ("Clarins").

⁵ The proposed Settlement Class, which the Court preliminarily certified in an order dated September 21, 2003, is as follows:

All persons who currently reside in the United States and who purchased Department Store Cosmetic Products in the United States, which products were manufactured, distributed and/or sold by the Manufacturer Defendants or Department Store Defendants, at any time during the period May 29,

1 In the event that the Manufacturer Defendant from which the Class member had previously
 2 purchased products has run out of DSCPs to be distributed, the Class member may obtain a
 3 DSCP that is being distributed by another Manufacturer Defendant.

4 b. The parties and objectors agree that, in addition to the back-end
 5 published distribution notice, the Department Store Defendants will display at prominent
 6 places in the cosmetic departments of their stores a written notice that will describe the
 7 distribution, including the limit of one DSCP per customer. This in-store notice will be
 8 consistent with the back-end published notice. The content of the in-store notice and the
 9 period during which it will be displayed shall be submitted by Defendants to the Special
 10 Master for approval and to the Product Review Committee ("PRC") described below for
 11 comment at least 90 days prior to the commencement of the distribution.

12 c. The parties and objectors agreed to create a PRC that would consist of
 13 three persons from among the counsel representing Class Plaintiffs, one counsel
 14 representing the state A.G.s, and one counsel representing the Coordinated Objectors. The
 15 PRC will review the DSCPs to be distributed by Defendants to ensure that the DSCPs are
 16 consistent, in value, quality and desirability, with the products that heretofore have been
 17 presented to the Special Master and the Court in connection with this settlement approval
 18 process, and with the terms of the Settlement Agreement. Pursuant to Fed. R. Civ. P. 53,
 19 the Special Master will make a report, order or recommendation, which the Court shall
 20 review pursuant to that rule. The schedule for the PRC's meetings will be worked out prior
 21 to the time of final product selection.

22
 23 1994 through July 16, 2003 (the "Class Period"). Excluded from this
 24 Settlement Class are all employees, officers, directors or agents (including
 25 attorneys) of any defendants, as well as any judge, justice or judicial officer
 26 presiding over this matter, and each such person's immediate family.

27 ⁶ DSCPs are defined in paragraph 2 of the settlement agreement herein as high-end,
 28 prestige or specialty beauty and cosmetic products and product lines (including color
 products, treatment and fragrances) sold by the Manufacturer Defendants under various
 brand names from May 29, 1994 through July 16, 2003. These products are sold primarily
 through traditional department and/or specialty stores and not through mass distribution
 channels.

d. The Special Master will also be responsible for reviewing and approving the month of the year in which the distribution of DSCPs will actually take place.

Dated: February 23, 2005

Respectfully submitted,

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EXHIBIT B

Legal Notice

**If You Purchased Department Store Cosmetics
or Fragrance Products at Certain Department Stores
during the period May 29, 1994 through July 16, 2003,**

You may be entitled to obtain, on a first come, first served basis, a free product under an approved class action settlement. Products will be available starting January 20, 2009 at this store and participating stores identified at www.cosmeticssettlement.com.

**Which Cosmetics and Fragrance Products
Were Included in the Lawsuit?**

This lawsuit involved high-end, or specialty beauty and cosmetic products and product lines, including color products (such as foundation, eye shadow and lipsticks), treatments (such as skin creams and moisturizers) and fragrances sold in certain department stores ("Department Store Cosmetics"). These products are manufactured, distributed and/or sold by the Manufacturer Defendants through the Retailer Defendants' department stores.

What Do I Have to do to Get Free Cosmetics?

- Have purchased Department Store Cosmetics or Fragrances at this or other Department Stores between May 29, 1994 through July 16, 2003 and you did not previously exclude yourself.
- Visit a participating Department Store starting on January 20, 2009 but only while supplies last, to claim your product.
- Sign a form at the time you receive your product stating that you are a member of the class.
- Not be an employee, officer, director, agent or attorney of any Defendant, or the judge presiding over this matter or a member of each such person's immediate family.

What Free Products Are Being Provided?

\$175 million worth of free cosmetics and fragrance products are being provided. See list of brands to be distributed on right.

The products will be distributed on
a **first come, first served** basis,
while supplies last, and
no rain checks will be provided.

**One (1) Item Per Customer.
NO RETURNS – NO EXCHANGES**

Boucheron (USA) Ltd.:

Boucheron

Chanel, Inc.:

Chanel

Christian Dior Perfumes, Inc.:

Christian Dior

Clarins U.S.A., Inc.:

Clarins

Coty, Inc. (on behalf of Conopco Inc.):

Calvin Klein

Vera Wang

Sarah Jessica Parker

The Estée Lauder Companies, Inc.:

Estée Lauder

Clinique

Guerlain, Inc.:

Guerlain

L'Oréal USA, Inc.:

Lancôme

Ralph Lauren

Giorgio Armani

Parfums Givenchy, Inc.:

Givenchy

**ALL BRANDS ARE NOT AVAILABLE
IN ALL STORE LOCATIONS**